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January 10, 2024

**VIA ELECTRONIC MAIL**

Honorable Myong J. Joun  
c/o Steve York, Samantha Dore  
United States District Court for the District of Massachusetts  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way, Suite 2300  
Boston, Massachusetts 02210  
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**Re: *Gino v. President and Fellows of Harvard College, et al.*, 1:23-cv-11775-MJJ**

Dear Judge Joun,

Our office represents Professor Francesca Gino (“Professor Gino”), the Plaintiff in the above-captioned matter. On behalf of Professor Gino, we write to respectfully request that your Honor take judicial notice of facts which have been widely reported by the press concerning the President and Fellows of Harvard College (“Harvard” or “Fellows”) with respect to its handling of allegations of research misconduct by its former president, Claudine Gay, as they bear directly on Professor Gino’s claims against Harvard.<sup>1</sup>

Widely reported facts indicate that, upon learning of the allegations against Dr. Gay and through the completion of its investigation, Harvard afforded Dr. Gay a presumption of innocence. For example, multiple sources have reported that, after Harvard became aware of the allegations against Dr. Gay on October 24, 2023 through a press inquiry from the *New York Post*, on October 27, 2023, *before* Harvard conducted an investigation, Harvard’s outside counsel, Clare Locke, wrote the *New York Post* that the allegations were “demonstrably false” and threatened to sue the paper.<sup>2</sup>

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<sup>1</sup> See *Lopes v. Riendeau*, 177 F. Supp. 3d 634, 666 (D. Mass. 2016) (“A court may take judicial notice of “adjudicative facts.”) (discussing Fed. R. Evid. 201(b)).

<sup>2</sup> See, e.g., Isabel Vincent, [Harvard Board Facing Probe Over Claudine Gay Cover-Up And Censorship Demands](https://nypost.com/2024/01/09/news/harvard-facing-probe-over-claudine-gay-cover-up-censorship/), NEW YORK POST, Jan. 9, 2024, <https://nypost.com/2024/01/09/news/harvard-facing-probe-over-claudine-gay-cover-up-censorship/>; Harriet Alexander, [REVEALED: Harvard cleared Claudine Gay of plagiarism WITHOUT proper investigation - as furious colleagues blast Ivy League school's 'irregular' and 'opaque' probe into under-siege president](https://www.dailymail.co.uk/news/article-12895337/harvard-president), DAILY MAIL.COM, Dec. 2, 2023, [https://www.dailymail.co.uk/news/article-12895337/harvard-](https://www.dailymail.co.uk/news/article-12895337/harvard-president)

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Widely reported facts indicate that Harvard took due care for Dr. Gay's professional reputation. For example, multiple sources have reported that, after allegations of research misconduct against Dr. Gay were made public in a [newsletter published on December 10, 2023](#) and in an [article in the \*Washington Free Beacon\* on December 11, 2023](#), Harvard issued a [public statement on December 12, 2023](#) in which it indicated that Dr. Gay's conduct did not amount to a violation of Harvard's standards and that Harvard stood in unanimous support of Dr. Gay.<sup>3</sup> It has also been widely reported that, as public scrutiny of the allegations continued to mount, Harvard permitted Dr. Gay to graciously step down as president and to remain employed as a member of the faculty.<sup>4</sup>

These reported facts are in stark contrast to Professor Gino's treatment by Harvard, as alleged in her Amended Complaint.

Thank you for your consideration in this matter. If we can provide you with any additional information, please feel free to contact me.

[SIGNATURE PAGE FOLLOWS]

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president-claudine-gay-plagiarism-lawyers-tom-clare.html; Cam E. Kettles and Tilly R. Robinson, [A Law Firm Said Plagiarism Allegations Against Harvard President Gay Were 'Demonstrably False.' Then She Submitted Corrections](#), THE HARVARD CRIMSON, Dec. 25, 2023, updated Dec. 29, 2023, at 9:49 p.m., <https://www.thecrimson.com/article/2023/12/25/harvard-threaten-sue-post/>.

<sup>3</sup> See, e.g., Jennifer Schuessler, [Harvard Finds More Instances of 'Duplicative Language' in President's Work](#), NEW YORK TIMES, Dec. 20, 2023, <https://www.nytimes.com/2023/12/20/us/harvard-claudine-gay-plagiarism.html>; Anna Betts, [6 Months and a Swirl of Controversy: A Timeline of Claudine Gay's Tenure as Harvard President](#), NEW YORK TIMES, Dec. 21, 2023, <https://www.nytimes.com/2023/12/21/us/harvard-president-claudine-gay-timeline.html?searchResultPosition=24>; Chas Danner, [Will Plagiarism Allegations Be Harvard President Claudine Gay's Downfall?](#), NEW YORK MAGAZINE, Dec. 22, 2023, <https://nymag.com/intelligencer/article/will-harvard-president-claudine-gay-survive-plagiarism-allegations.html>.

<sup>4</sup> See, e.g., Susan Svrulga, [Harvard President Resigns Amid Plagiarism Allegations, Testimony Backlash](#), WASHINGTON POST, Jan. 2, 2024, <https://www.washingtonpost.com/education/2024/01/02/claudine-gay-resigns-harvard/>; Josh Moody, [Harvard President Resigns Amid Controversy](#), INSIDE HIGHER ED, Jan. 2, 2024, <https://www.insidehighered.com/news/governance/executive-leadership/2024/01/02/harvard-president-resigns-amid-controversy>; [Read Claudine Gay's Resignation Letter](#), NEW YORK TIMES, Jan. 2, 2024, <https://www.nytimes.com/2024/01/02/us/claudine-gay-resignation-letter-harvard.html?searchResultPosition=9>.

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January 10, 2024  
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Very truly yours,

NESEN OFF & MILTENBERG, LLP

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FRANCESCA GINO,

*Plaintiff,*

v.

PRESIDENT AND FELLOWS OF  
HARVARD COLLEGE, SRIKANT  
DATAR, URI SIMONSOHN, LEIF  
NELSON, JOSEPH SIMMONS, JOHN  
DOES 1-10, AND JANE DOES 1-10,

*Defendants.*

Civil Action No. 1:23-cv-11775-MJJ

AFFIDAVIT OF SERVICE

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

Barbara Rosenberg, being duly sworn, deposes and says I am not a party to this action, I am over 18 years of age and my business address is c/o Nesenoff & Miltenberg, LLP, 363 Seventh Avenue, New York, New York 10001.

On the 10<sup>th</sup> day of January, 2024, deponent served a true copy of the Letter to Honorable Judge Myong J. Joun via email and the New York State Courts E-filing system ("NYSCEF") to:

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Samantha\_Dore@mad.uscourts.gov;  
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rob.bertsche@klarislaw.com;  
rbourquin@aclum.org;

  
Barbara Rosenberg

Sworn to before me this  
11<sup>th</sup> day of January, 2024

  
Notary Public

GOLDSTEIN BENJAMIN  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02GO6420842  
Qualified in QUEENS County  
Commission Expires AUGUST 16, 2025